IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.488 OF 2007

In

EXECUTION APPLICATION NO.163 OF 2005

In

SUIT NO.1264 OF 2000

Mrs.Anuradha Nayan Shah : Plaintiff

V/s.

Jayantilal Vallabhdas Patni & Ors. : Defendants

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Mr.P.N.Vora i/b. Pramodkumar & Co., for defendant nos.4 & 5 in support.

Mr.Jaideep Mitra with Mr.C.M.Vimadalal i/b. M.P.Rege & Co., for the plaintiffs to show cause.

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CORAM : A.M. KHANWILKAR, J.

DATE : APRIL 23, 2007.

P.C.

Heard the counsel for the parties.

2. Although the original defendant nos.4 & 5/applicants are justified in making the grievance that their names having been deleted from the array of parties in Suit no.1264 of 2000 in terms of the order dated 9.10.2001, no

decree can be drawn against them nor the plaintiff would be entitled to proceed in execution against the applicants-defendants nos.4 & 5. However, the applicants will have to consider taking out appropriate application to get the decree amended. That cannot be done in execution proceedings. The Executing Court, it is well established, cannot go behind the decree.

3. Be that as it may, this Chamber Summons can otherwise be disposed of in view of the statement made by the counsel for the plaintiff-decree holder that the plaintiff-decree holder has no intention to proceed against the defendant nos.4 & 5 in execution of the decree passed in Suit no.1264 of 2000. The counsel for the decree-holder also assures that the plaintiff will take all precautions to ensure that the names of the defendant nos.4 and 5 are not mentioned in any of the public notices or publications to be issued by the plaintiff for the purpose of execution of the decree passed in Suit no.1264 of 2000. The above statements are accepted. Even for this reason, no further order on this application are warranted.

4. Accordingly, the Chamber Summons is disposed of in the above terms.

A.M. KHANWILKAR, J.